



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No.

WOOD, HERRON & EVANS, L.L.P. (IBM)
2700 CAREW TOWER
441 VINE STREET
CINCINNATI OH 45202

MAILED

JUN 30 2010

OFFICE OF PETITIONS

In re Application of	:	
Miller	:	DECISION ON APPLICATION
Application No. 09/732,189	:	FOR
Filed: December 7, 2000	:	PATENT TERM ADJUSTMENT
Docket No. IBM/151	:	
Title: PEER PROTOCOL STATUS QUERY	:	
IN CLUSTERED COMPUTER SYSTEM	:	

This is a decision on the "PETITION TO CORRECT PATENT TERM ADJUSTMENT," filed February 3, 2010. Applicants request that the patent term adjustment indicated on the initial determination of patent term adjustment be corrected from one thousand, eight hundred and ninety-two (1892) days to one thousand, nine hundred and forty-eight (1948) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **one thousand, nine hundred and forty-eight (1948)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On January 22, 2010, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicants were advised that the patent term adjustment to date is 1892 days. On February 3, 2010, Applicants timely¹ filed the present application for patent term adjustment. Applicants argue that an additional 56 days of examination delay should be accorded.

¹ Office records show that the Issue Fee payment was received on February 3, 2010.

Applicants state that any patent issuing from the application is not subject to a terminal disclaimer.²

37 CFR 1.703(a)(5) states that the term of an original patent shall be adjusted by the failure of the Office to mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than four months after the date of a final decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145 or 146 where at least one allowable claim remains in the application.

The application history has been reviewed and it has been determined that Applicants are correct in stating that an additional period of examination delay should be accorded. A final decision by the Board of Patent Appeals and Interferences was mailed on July 27, 2009, and at least one allowable claim (claims 1-21) remained in the application.³ The notice of allowance was mailed four months and 56 days after the date of a final decision by the Board of Patent Appeals and Interferences, resulting in 56 days of examination delay.

An adjustment of 56 days has been entered.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is one thousand, nine hundred and forty-eight (1948) days (2144 days of Office delay minus 196 days of Applicant delay).

Submission of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in

² Petition, page 2.

³ See MPEP § 2731, example C: "[i]f claims 1 and 2 are pending, and the decision affirms the rejection of claim 1 and reverses the rejection of claim 2, 'allowable claims remain in the application' for purposes of 35 U.S.C. 154(b)(1)(A)(iii) (claim 2 is 'allowable' within the meaning of 37 CFR 1.703(a)(5) because there is no outstanding objection or requirement as to it (see MPEP § 1214.06, paragraph (I)(B))."

the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this matter should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.

A handwritten signature in black ink, appearing to read 'Anthony Knight', is written over the printed name.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of updated PAIR screen

Day : Wednesday

PALM INTRANET

Date: 6/30/2010

Time: 08:22:39

PTA Calculations for Application: 09/732189

Application Filing Date:	12/07/2000	PTO Delay (PTO):	2088
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	196
Post-Issue Petitions:	0	Total PTA (days):	1948
PTO Delay Adjustment:	56		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
90	06/30/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	56		
79	01/22/2010	MAIL NOTICE OF ALLOWANCE			
78	12/23/2009	ISSUE REVISION COMPLETED			
77	12/23/2009	DOCUMENT VERIFICATION			
76	12/16/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
75	12/16/2009	NOTICE OF ALLOWABILITY			
74	07/27/2009	MAIL BPAI DECISION ON APPEAL - REVERSED	1321		42
73	07/27/2009	BPAI DECISION - EXAMINER REVERSED			
72	07/27/2009	MAIL - BPAI DECISION 41.50(B) IN IFW: 196(B)			
71	07/27/2009	BPAI DECISION 41.50(B)			
70	10/07/2008	CASE DOCKETED TO EXAMINER IN GAU			
68	08/21/2008	DOCKETING NOTICE MAILED TO APPELLANT			
67	08/16/2008	ASSIGNMENT OF APPEAL NUMBER			
66	07/14/2008	APPEAL AWAITING BPAI DOCKETING			
65	05/14/2008	APPEAL READY FOR BPAI REVIEW			
64	12/29/2007	APPEAL READY FOR BPAI DOCKETING			
63	12/07/2007	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
62	12/05/2007	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
61	06/09/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
60	11/01/2007	RETURN OF UNDOCKETED APPEAL TO THE TC			
59	11/01/2007	EXAM. ANS. REVIEW COMPLETE			
58	10/05/2007	MAIL EXAMINER'S ANSWER			

57	09/29/2007	EXAMINER'S ANSWER TO APPEAL BRIEF			
55	07/21/2007	APPEAL BRIEF REVIEW COMPLETE			
54	07/21/2007	DATE FORWARDED TO EXAMINER			
53	06/18/2007	APPEAL BRIEF FILED			
52	05/18/2007	NOTICE -- DEFECTIVE APPEAL BRIEF			
51	04/03/2007	APPEAL BRIEF REVIEW COMPLETE			
50	04/03/2007	DATE FORWARDED TO EXAMINER			
49.1	02/02/2007	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
49	02/02/2007	APPEAL BRIEF FILED			
48	01/24/2007	NOTICE -- DEFECTIVE APPEAL BRIEF			
47	01/17/2007	DATE FORWARDED TO EXAMINER			
46.1	02/15/2006	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
46	02/15/2006	APPEAL BRIEF FILED			
45.7	06/09/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		114	46
45	06/09/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
44	01/13/2006	MAIL ADVISORY ACTION (PTOL - 303)			
43	01/09/2006	ADVISORY ACTION (PTOL-303)			
42	12/15/2005	NOTICE OF APPEAL FILED			
41	12/23/2005	DATE FORWARDED TO EXAMINER			
40	12/15/2005	AMENDMENT AFTER FINAL REJECTION			
39	09/20/2005	MAIL FINAL REJECTION (PTOL - 326)			
38	09/19/2005	FINAL REJECTION			
37	07/08/2005	DATE FORWARDED TO EXAMINER			
36	07/01/2005	RESPONSE AFTER NON-FINAL ACTION			
35	05/16/2005	REFERENCE CAPTURE ON IDS			
34.7	05/16/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
34	05/16/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
33	04/04/2005	MAIL NON-FINAL REJECTION			
32	04/01/2005	NON-FINAL REJECTION			
31.7	03/07/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		75	29
31	03/07/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

30	02/01/2005	DATE FORWARDED TO EXAMINER			
29	12/22/2004	APPEAL BRIEF FILED			
28	10/25/2004	REFERENCE CAPTURE ON IDS			
26	12/07/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
25	10/22/2004	NOTICE OF APPEAL FILED			
24	07/23/2004	MAIL FINAL REJECTION (PTOL - 326)			
23	07/22/2004	FINAL REJECTION			
22	07/19/2004	CORRESPONDENCE ADDRESS CHANGE			
21	06/22/2004	REFERENCE CAPTURE ON IDS			
20.7	06/22/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		7	18
20	06/22/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
19	07/09/2004	DATE FORWARDED TO EXAMINER			
18	06/15/2004	RESPONSE AFTER NON-FINAL ACTION			
17	06/15/2004	WORKFLOW INCOMING AMENDMENT IFW			
16.7	04/23/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	04/23/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15.7	03/29/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	03/29/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	03/15/2004	MAIL NON-FINAL REJECTION	767		-1
13	03/08/2004	NON-FINAL REJECTION			
12	02/20/2004	CASE DOCKETED TO EXAMINER IN GAU			
11.7	01/29/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	01/29/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	12/02/2003	CASE DOCKETED TO EXAMINER IN GAU			
9.7	11/19/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
9	11/19/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	07/21/2003	CASE DOCKETED TO EXAMINER IN GAU			
7.7	12/31/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

7	12/31/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
6.7	06/04/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
6	06/04/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
5	02/13/2001	CASE DOCKETED TO EXAMINER IN GAU			
4	02/02/2001	APPLICATION DISPATCHED FROM OIPE			
3	01/26/2001	CORRESPONDENCE ADDRESS CHANGE			
2	01/08/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	12/07/2000	INITIAL EXAM TEAM NN			

Search Another: Application#

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

Back to [OASIS](#) | [Home page](#)